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ADMINISTRATION OF JUSTICE

Written statement* submitted by Japan Fellowship of Reconciliation,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 July 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ENG

JFOR in cooperation with the Osaka Bar Association wishes to draw the attention of the Sub-Commission on the Promotion and Protection of Human Rights to the systematic violations of the International Covenant on Civil and Political Rights by the Supreme Court of Japan.

1. Sequence of Events of Tokushima Prison Interview Obstruction Incident

When Masao Kitano, who had been sentenced in April of 1990 to 15 years of penal servitude for murder, was transferred from Osaka Detention Center to Tokushima Prison in Japan, prison guards beat him for no reason.

When Mr. Kitano met to consult with his attorney regarding this beating damage case, Tokushima Prison uniformly limited interviews to 30 minutes according to Article 121 of the Prison Law Enforcement Regulations[1] and had a prison guard be present at the interviews according to Article 127,[2] paragraph 1 of the Prison Law Enforcement Regulations.

On August 21, 1991, Mr. Kitano and three attorneys filed a suit demanding damages against the Government of Japan for interference with interviews. This is the Tokushima Incident.

2. Judgment of the Tokushima District Court

On March 15, 1996, the Tokushima District Court rendered a judgment granting damages, finding that the Tokushima Prison's 30-minute time limitation on interviews was a violation of Article 14 of the ICCPR which guaranteed the right to a fair civil trial.[3]

3. Judgment of the Takamatsu High Court

The Takamatsu High Court handed down its judgment on appeal on November 25, 1997.[4] In the decision, the Court presented the following detailed interpretation of the ICCPR.

(1) As with the District Court, the High Court found that the ICCPR was directly applied within Japan.

(2) Since the European Convention of Human Rights is considered important as a regional human rights treaty endorsed by the majority of European nations and it has a close relationship with the ICCPR, the case law of the European Court of Human Rights with respect to this Convention, can serve as guidelines in interpreting Article 14, Paragraph 1 of the ICCPR notwithstanding the definitions in Article 31, Paragraph 3 of the Vienna Convention on the Law of Treaties.[5]

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1 Prison Law Enforcement Regulations, Article 121: The time of interview shall be 30 minutes or less, except with a criminal defense counsel

2 Prison Law Enforcement Regulations, Article 127:

1 Prison guards shall be present at an interview except in case of an interview between a criminal defendant and its defense counsel.

2 (omitted)

3 The prison warden may allow an interview without a guard when he finds it necessary for education or otherwise.

3 1597 Hanrei Jiho 115

4 977 Hanrei Times 65

5 Article 31.3:There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the

(3) The Takamatsu High Court stated that the United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (U.N. resolution) were significant as international standards for persons detained or imprisoned, and thus were guidelines in interpreting Article 14, Paragraph 1 of the ICCPR in spite of not coming under Article 31, Paragraph 3 (b) of the Vienna Convention on the Law of Treaties,[6] since this Body of Principles were drafted by experts as 'principles that can be adopted without much difficulty by almost all nations, without regard to legal system or degree of economic development' and actually were adopted upon prudent deliberation and without substantial opposition.

Based on the foregoing, the Takamatsu High Court held that in light of the judgment of the European Court of Human Rights in Campbell & Fell v. the United Kingdom[7] as well as the Principle 18[8] of the U.N. Body of Principles, Article 14, Paragraph 1 of the ICCPR guarantees the equality between the parties which entails the right of prisoner to interview with his attorney for a civil lawsuit and that the Tokushima Prison's imposition of the presence of a prison guard and the 30-minute time limitation on an interview between a prisoner and his attorney were unlawful as violation of Article 14 of the ICCPR, thus upholding the Tokushima District Court's approval of damages.

4. The Supreme Court Judgment

The First Petty Bench of the Supreme Court of September 7, 2000 reversed the judgments of the Tokushima District Court and the Takamatsu High Court and rejected the claims for damages of Mr. Kitano and his attorneys based on the following reasoning. Article 121 and Article 127, Paragraph 1 of the Prison Law Enforcement Regulations, which comprise the statutory foundation for the above-mentioned interview restrictions, do not violate Article 13 (respect for individuals) or Article 32 (right of access to the courts) of the Constitution. The Court found this to be clear by reference to cases such as the Judgment of the Supreme Court (Grand Bench) of September 16, 1970[9] and the Judgment of the Supreme Court (Grand Bench) of June 22, 1983.[10] Further, the Court found that these provisions

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application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties

6 supra note 5

7 Judgment of June 28, 1984: It held that English prison's having prison guards present at prisoner-attorney interviews for civil proceedings violated Article 6 (equivalent of Article 14 of the ICCPR).

8 Principle 18:

1 A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

2 A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

3 (omitted)

4 Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5 (omitted)

9 24/10 Minshu 1410: It is held that prohibition on inmates' smoking by the Prison Law Enforcement Regulations with a view to maintaining the prison order does not violate Article 13 (respect for individuals) of the Constitution.

10 37/5 Minshu 793: It is held that imposing a certain restriction on inmates' reading of newspapers by the Prison Law Enforcement Regulations with a view to maintaining the prison order violates neither Article 13 (respect for individuals), Article 19 (freedom of thoughts and conscience), nor Article 21(freedom of expression)

were not in violation of Article 14 of the ICCPR. Moreover, the question of whether, in a particular case, an interview in excess of 30 minutes would be permissible or a prison guard would be present was entrusted to the discretion of the prison warden, who was familiar with the circumstances inside the prison. And the prison warden's decision could not amount to an unlawful act in the absence of an abuse of discretion.

However, the Supreme Court did not in any way make clear the reasons why the above-mentioned provisions of the Prison Law Enforcement Regulations do not violate the ICCPR. The Court's incomprehension of or disregard for the ICCPR is evident.

5. The Supreme Court of Japan's Half-hearted Stance on the ICCPR

The tendency of the courts of Japan, especially the Supreme Court, to try to avoid passing judgment on international human rights treaties, including the ICCPR, is remarkable. Cases in which international human rights treaties, especially the ICCPR, are invoked in the courts have become widespread in Japan since the 1980s, but the Supreme Court has failed to deal squarely and earnestly with the issue. The above Tokushima Incident decision is a typical example of finding no violation of the ICCPR without stating any reasons.

The Government of Japan, in its fourth periodic report to the Human Rights Committee, stated that in no case did the Supreme Court find that laws, regulations and measures were in violation of the ICCPR.[11] However, the Human Rights Committee, in its concluding observations adopted November 5, 1998, just after reviewing this report, pointed out 29 subjects of concern and recommendations against Japan.[12] The fact that the Supreme Court found no case in violation of the ICCPR in a country with this many human rights problems is evidence that the Court is not earnestly applying the ICCPR.

The Supreme Court's treatment of the ICCPR here violates the duty prescribed in Article 2, Paragraph 3 to develop the possibilities of judicial remedy.

Accordingly, we hereby request that the Supreme Court of Japan be strongly recommended by the UN to sincerely apply the ICCPR to cases before it.

Further, we would add that, although Japan ratified the ICCPR, it has not ratified the Optional Protocol thereto. Consequently, an individual whose rights under the Covenant have been violated can seek no relief by submitting a communication to the Human Rights Committee.

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11 Paragraph 10 of Japan's fourth periodic reports, CCPR/C/115/Add. 3
12 CCPR/C/79/Add. 102